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PROPOSED ATTORNEYS FOR DEBTORS
AND DEBTORS-IN-POSSESSION

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

IN RE:

SOTERA WIRELESS, INC.,
DEBTOR.

SOTERA WIRELESS, INC.,
DEBTOR. 16-05968-LT11
SOTERA RESEARCH, INC.,
DEBTOR. 16-05969-LT11

LEAD CASE No. 16-05968-LT11

CHAPTER 11

(JOINT ADMINISTRATION REQUESTED)

FIRST DAY MOTION

**DECLARATION OF THOMAS
WATLINGTON IN SUPPORT OF
CHAPTER 11 PETITIONS AND
FIRST DAY PLEADINGS**

DATE: OCTOBER 4, 2016
TIME: 3:00 P.M.
DEPT: 3, ROOM 129
JUDGE: HON. LAURA S. TAYLOR

I, Thomas Watlington, declare as follows:

1. Under 28 U.S.C. §1764, Thomas Watlington declares as follows
under the penalty of perjury:

2. I am the Chief Executive Officer of Sotera Wireless, Inc., a California
corporation ("Sotera"), which is the parent company of Sotera Research, Inc., a
Delaware corporation ("Sotera Research" and together with Sotera, the "Debtors").
On the date hereof, the Debtors filed petitions for chapter 11 bankruptcy relief
under title 11 of United States Code, 11 U.S.C. § 101 et. seq., as amended (the
"Bankruptcy Code") (collectively, the "Chapter 11 Cases"). I am authorized to

1 submit this declaration (the “First Day Declaration”) on behalf of the Debtors.

2 3. I have served as Chief Executive Officer of Sotera since January 30,
3 2006. I have also served as Chief Executive Officer of Sotera Research since its
4 incorporation on April 1, 2011. In these roles I am responsible for the oversight of
5 operations and financial activities of the Debtors, including but not limited to,
6 raising capital, product development, sales and marketing operations, monitoring
7 cash flow, workforce matters and financial planning. As a result of my tenure with
8 the Debtors, my review of documents and my discussions with other members of
9 Debtors’ management team, I am generally familiar with the Debtors’ business,
10 financial condition, policies and procedures, day-to-day operations, and books and
11 records. Except as otherwise noted, I have personal knowledge of the matters set
12 forth herein or have gained knowledge of such matters from the Debtors’
13 employees or retained advisers that report to me in the ordinary course of my
14 responsibilities. I am authorized by each of the Debtors to submit this First Day
15 Declaration. Reference to the Bankruptcy Code, the chapter 11 process, and
16 related legal matters are based on my understanding of such matters in reliance on
17 the explanation provided by, and the advice of, counsel. If called upon to testify, I
18 would testify competently to the facts set forth in the First Day Declaration.

19 4. On September 30, 2016 (the “Petition Date”), the Debtors filed
20 voluntary petitions for relief in the United States Bankruptcy Court for the
21 Southern District of California (the “Court”). The Debtors will continue to operate
22 their business and manage their properties as debtors in possession.

23 5. Sotera Wireless Singapore Pte. Ltd., a Singaporean private limited
24 company (“Sotera Singapore”), is a wholly owned subsidiary of Sotera. Sotera
25 Singapore is not a chapter 11 debtor and will not be subject to the requirements
26 applicable to a debtor under the Bankruptcy Code. Sotera Singapore serves as a
27 sales office for the Asia Pacific region.

28

6. I submit this First Day Declaration on behalf of the Debtors in support of the Debtors' (a) voluntary petitions for relief, which were filed under chapter 11 of the Bankruptcy Code, and (b) "first-day" pleadings, which are being filed concurrently herewith (collectively, the "First Day Pleadings"). The Debtors seek the relief set forth in the First Day Pleadings to minimize the adverse effects of the commencement of the Chapter 11 Cases on their business. I have reviewed the Debtors' petitions and the First Day Pleadings, or have otherwise had their contents explained to me, and it is my belief that the relief sought therein is essential to ensure the uninterrupted operation of the Debtors' business and to successfully maximize the value of the Debtors' estates.

7. Part I of this First Day Declaration provides an overview of the Debtors' business, organizational structure, capital structure, and significant prepetition indebtedness, as well as a discussion of the Debtors' financial performance and the events leading to the Debtors' chapter 11 filings. Part II sets forth the relevant facts in support of the First Day Pleadings.

PART I

I. COMPANY AND BUSINESS OVERVIEW

A. Overview of Operations

1. Product Overview

8. Sotera is a medical technology company that developed a new generation of vital signs surveillance monitoring via a proprietary technology platform, the ViSi Mobile System ("ViSi"). ViSi is a wearable, ICU-grade system that continuously monitors patient vital signs (including respiration, heart rate/pulse rate, ECG, skin temperature, blood oxygen, and blood pressure without the constant use of an inflatable cuff), wirelessly transmits real-time patient data to the patient care team and automatically integrates patient data into the electronic medical records system. Sotera's initial commercial focus has been on the general care hospital setting where the current standard of care for monitoring patients is to

1 spot check the patient every four to five hours. With ICU-grade continuous
2 monitoring, ViSi enables the care team to detect deteriorations early and
3 potentially intervene prior to a possible adverse event with better information. As
4 a result, Sotera's patented, FDA 510(k)-cleared ViSi significantly improves patient
5 safety and satisfaction and simplifies the care teams' workflow, providing a
6 compelling value proposition for the patient, nurse/physician, hospital and
7 healthcare system.

8 9. ViSi has received eight different FDA approvals since 2011, received
9 its "CE" mark in 2012, which signifies conformity with certain European safety
10 standards, and has since been implemented in over 45 hospitals and hospital
11 systems in the U.S. and in Australia, Taiwan, Singapore and Saudi Arabia.

12 10. The ViSi consists of wearable equipment, proprietary software, and
13 securements and attachments which are disposable. The primary components of
14 equipment are the wrist transceiver, the ECG chest sensor, soft-wrap thumb sensor
15 and the blood pressure cuff module which is used for initial calibration purposes.

16 2. Commercial Promotion and Customer Support

17 11. Sotera promotes the ViSi through a direct sales force of twelve sales
18 representatives in the United States, and two sales representatives focused on
19 international markets. The sales effort is supported by a two-person sales
20 operations team that assists with customer quotes and contracts, and processes
21 sales orders. Marketing efforts are provided by Sotera's head of marketing and a
22 product manager. Sotera has distributor agreements for Taiwan, Singapore,
23 Australia, Saudi Arabia, China, South Korea and Japan.

24 12. Installation, customer training and interoperability services
25 (connecting the ViSi System to a hospital's systems) are accomplished by a nine
26 person team of deployment techs, clinical specialists, project managers and
27 interoperability engineers.
28

1 13. As of August 25, 2016, there were 45 hospitals utilizing the ViSi
2 Mobile System, including hospitals in Australia, Singapore, Taiwan and Saudi
3 Arabia. Customer and technical support is provided to Sotera's customers by two
4 additional technicians.

5 **3. Research and Product Development**

6 14. Sotera's 29-person R&D Team oversees the development of all
7 aspects of the ViSi including its novel hardware designs and proprietary software,
8 which includes numerous algorithms. The R&D Team includes hardware
9 engineers, system and embedded software engineers, and developers of quality
10 systems and quality assurance functions. Sotera's Science Team is responsible for
11 conducting primary research and technical analysis and support.

12 15. The ViSi provides the functionality of monitoring all key vital signs
13 on a continuous basis, including non-invasive blood pressure readings without the
14 repeated use an inflation cuff. The system also features advanced alarm
15 management, network integration and virtualization, remote alarming capability
16 and enterprise software architecture. Sotera has received FDA clearance for
17 posture and motion alarms, and is currently working on features for detecting life-
18 threatening arrhythmias and other features.

19 16. Sotera's product pipeline includes the commercial development of
20 sensing monitors for measuring oxygen saturation and pH in muscle tissue (both of
21 which are FDA approved and valuable indicators of internal hemorrhage and septic
22 shock), which were acquired through an acquisition of assets from Reflectance
23 Medical, Inc. in early 2015. Additionally, Sotera holds several patents through
24 assignment for measuring cardiac output, but is not currently developing this
25 technology.

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4. Intellectual Property

17. Sotera intellectual property includes 47 issued and 2 allowed (i.e., the inventions have been determined to be patentable but patents have not yet issued) U.S. patents, along with 55 pending U.S. patent applications. Outside the U.S., Sotera has 14 issued applications.

18. Sotera's patents primarily relate to continuous non-invasive blood pressure monitoring, impedance pneumography, alarm management/motion thresholds, respiration monitoring and signal fusion, data synchronization and the ViSi Mobile System form factors. The nominal patent term expirations on the U.S. patents range from 2028 – 2030.

19. Sotera has been assigned patents related to measuring vital signs during hemodialysis, measuring cardiac output, and patient activity monitoring. Sotera also holds non-exclusive licenses on patents related to measuring oxygen saturation and pH in muscle tissue, body-worn sensors and blood pressure cuff technologies.

5. Headquarters/Facilities/Employees

20. Sotera's headquarters are located in San Diego, California, and consist of approximately 30,000 square feet of leased office, manufacturing and warehouse space. As of the Petition Date, Sotera had 63 full time employees, the majority of which are located in San Diego. None of Sotera's employees are represented by a labor union.

6. Manufacturing

21. Sotera has a manufacturing suite of approximately 10,000 square feet within its San Diego facility. Final assembly, software loading and testing of the ViSi equipment components is performed in San Diego. Equipment components and disposables are sourced from approximately 180 domestic and international suppliers.

1 **B. Corporate Structure**

2 22. Sotera was originally incorporated in California on March 13, 2002
3 under the name Triage Data Networks, Inc. On December 9, 2004, Sotera was re-
4 incorporated in California for the purpose of changing its legal name to Triage
5 Wireless, Inc. On October 7, 2009, Sotera was re-incorporated in California for
6 the purpose of changing its name to Sotera Wireless, Inc.

7 23. As of July 31, 2016, Sotera had 5,084,116 shares of common stock
8 outstanding, 5,050,000 shares of Series A Preferred Stock outstanding, 12,337,509
9 shares of Series B Preferred Stock outstanding, 5,590,223 shares of Series C
10 Preferred Stock outstanding, 6,656,482 shares of Series D Preferred Stock
11 outstanding, 8,986,035 shares of Series D-1 Preferred Stock outstanding, and
12 29,562,174 shares of Series E Preferred Stock outstanding. As of July 31, 2016,
13 Sotera had 2,181,628 warrants and 10,324,369 stock options outstanding.

14 24. Sotera Research was incorporated in Delaware on April 1, 2011, and
15 is wholly owned by Sotera. Sotera Research is not an operating entity and does not
16 have any employees, but holds title to the assets acquired from Reflectance
17 Medical, Inc. on February 23, 2015.

18 **C. Summary of Prepetition Debt**

19 25. Sotera entered into an amended and restated loan and security
20 agreement with Silicon Valley Bank (“SVB”) and Oxford Finance LLC
21 (“Prepetition Lenders”) on September 12, 2014 (“Prepetition Loan Agreement”),
22 together with all other loan documents, security instruments and other documents
23 related to, referenced in or executed in connection with the Prepetition Loan
24 Agreement prior to the Petition Date, the (“Prepetition Loan Documents”),
25 pursuant to which the Prepetition Lenders provided secured loans to Sotera in the
26 amount of \$20.0 million (“Prepetition Loans”).

27 26. As of the Petition Date, the principal amount outstanding under the
28 Prepetition Loan Documents was just under \$13.1 million (together with any

1 accrued and unpaid interest, the “Prepetition Obligations”).

2 27. To secure the Prepetition Obligations and pursuant to the Prepetition
3 Loan Documents, Sotera granted to the Prepetition Lenders security interests in
4 and liens on substantially all assets (the “Prepetition Liens”) and all proceeds and
5 products thereof, including but not limited to all goods, accounts receivables,
6 equipment, inventory, contract rights or rights to payment of money, leases, license
7 agreements, franchise agreements, general intangibles as defined in the Uniform
8 Commercial Code, cash, deposit accounts, certificates of deposit, fixtures,
9 securities, all other investment property and financial assets (the “Prepetition
10 Collateral”). Notwithstanding the foregoing, the Prepetition Collateral does not
11 include, among other items, copyright rights, applications and registrations,
12 patents, patent applications and like protections, trademarks, know-how, trade
13 secret rights, clinical and non-clinical data and rights to unpatented inventions (the
14 “Intellectual Property”); however, the Prepetition Collateral does include proceeds
15 of the Intellectual Property.

16 **II. EVENTS LEADING TO THE CHAPTER 11 FILINGS**

17 28. There are significant risks and uncertainties associated with
18 developing a medical device. Even before a device can be submitted for regulatory
19 review and approval, a medical device company must undergo a number of time-
20 consuming, expensive, and financially risky activities, including accurately
21 identifying unmet clinical/medical needs, designing and manufacturing a device
22 which works accurately and dependably, developing system and embedded
23 software to support the function of the device, and conducting clinical studies to
24 obtain evidence of the device’s satisfactory performance.

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1 29. To achieve profitability, companies in the medical device industry
2 must commercialize products with sufficient market acceptance to generate
3 significant revenue. This requires successful execution in marketing,
4 manufacturing, customer training and support, and continued product development
5 and support.

6 30. Sotera began fully commercializing the ViSi in the second half of
7 2014 after a period in 2013 and early 2014 of installing ViSi in several hospitals as
8 development sites. As with many hi-tech medical devices, the ViSi experienced
9 technical and performance issues that required Sotera to redirect resources and
10 resulted in delays of new product features and enhancements and ultimately in the
11 reduction of revenue. In spite of these delays, as of August 31, 2016, 45 hospitals
12 (40 in the United States) had purchased and installed the ViSi.

13 31. During early 2015 Sotera's Board of Directors formed a Strategy
14 Committee to identify sources to refinance the Prepetition Loans and to work with
15 Sotera's management to secure sufficient funding for Sotera's commercial
16 expansion. During 2015 and early 2016 a total of \$13.6 million of additional
17 equity capital was raised, but this amount was not sufficient for either Sotera's
18 long-term needs or to obtain refinancing of the Prepetition Loans.

19 32. In early 2016 the Strategy Committee engaged the investment bank
20 Piper Jaffray to attempt to consummate a transaction that would refinance Sotera's
21 Prepetition Loans or sell its assets.

22 33. Concurrently in 2015 and early 2016, Sotera began to incur significant
23 legal costs associated with a civil lawsuit in which Masimo Corporation
24 ("Masimo") alleged that Sotera, one current employee and one former employee
25 misappropriated trade secrets. At this time, Masimo has not quantified its claim
26 for damages. The increased legal costs, now aggregating over \$3 million, have
27 accelerated the cash consumption of Sotera.

28

34. Under the terms of the Prepetition Loans, the twelve-month interest only period expired in October 2015. Beginning in November 2015, Sotera began to make required monthly principal repayments of approximately \$630,000 per month. The required repayments of the Prepetition Loans have further accelerated the cash consumption of Sotera.

35. The efforts of Piper Jaffray to identify either a potential buyer or potential new lender to refinance the Prepetition Loans have resulted in the submission of two term sheets for the acquisition of all of Sotera's assets for consideration of up to \$30-52 million, depending upon the level of contingent payouts. Nevertheless, Sotera does not believe it will be able to conclude negotiations with either of these two potential buyers or other potentially interested parties and needs the "breathing spell" of chapter 11 to do so.

36. In light of the accelerated cash consumption caused by significant and increasing litigation costs and the on-going principal repayments on the Prepetition Loans, as of the Petition Date Sotera has cash reserves that are sufficient to support approximately 90 days of operations as set out in the 90-day budget filed as Exhibit B in support of the Cash Collateral Motion (as defined below) . Maintaining certain minimum levels of the Sotera's operations are necessary to provide on-going support and supplies to the current customer base and insure that operations of the ViSi in over 45 hospitals are not adversely impacted or interrupted. The filing of these Chapter 11 Cases will provide Sotera relief from interest and debt repayments on the Prepetition Loans and will halt or significantly reduce legal costs associated with the Masimo litigation (which will subject to the stay), and provide Sotera sufficient time to consummate a transaction.

PART II

37. In furtherance of the objective of achieving a value-maximizing transaction of the Debtors, the Debtors have sought approval of the First Day Pleadings and related orders (the “**Proposed Orders**”), and respectfully request that

1 the Court consider entering the Proposed Orders granting such First Day Pleadings.
2 For the avoidance of doubt, the Debtors seek authority, but not direction, to pay
3 amounts or satisfy obligations with respect to the relief requested in any of the
4 First Day Pleadings.

5 38. I have reviewed each of the First Day Pleadings, Proposed Orders and
6 attachments and exhibits thereto (or have otherwise had their contents explained to
7 me), and the facts set forth herein are true and correct to the best of my knowledge,
8 information and belief. Moreover, I believe that the relief sought in each of the
9 First Day Pleadings (a) is vital to enabling the Debtors to make the transition to,
10 and operate in, chapter 11 with minimum interruptions and disruptions to their
11 hospital customers and their business or loss of productivity or value and (b)
12 constitutes a critical element in the Debtors' being able successfully maximize the
13 value for the benefit of their estates.

14 **III. ADMINISTRATIVE AND PROCEDURAL PLEADINGS**

15 **A. Motion Of Debtors For Order Under Fed. R. Bankr. P. 1015**
16 **Authorizing Joint Administration Of Chapter 11 Cases (the**
17 **“Joint Administration Motion”)**

18 39. In the Joint Administration Motion, the Debtors seek entry of an
19 order, pursuant to Bankruptcy Rule 1015, directing joint administration of the
20 Chapter 11 Cases for procedural purposes only.

21 40. The Debtors anticipate that numerous notices, applications, motions,
22 other pleadings, hearings, and orders in the Chapter 11 Cases will affect both of the
23 Debtors. The Debtor believes joint administration of the Chapter 11 Cases will
24 save time and money and avoid duplicative and potentially confusing filings by
25 permitting counsel for all parties in interest to (a) use a single caption on the
26 numerous documents that will be served and filed and (b) file the papers in one
27 case rather than in multiple cases.
28

**B. Notice of Intended Action for the Setting of Insider Compensation
(the “Insider Compensation Notice”)**

41. In the NOIA, the Debtors seek authorization to set insider compensation levels as to myself and Mark Spring and to pay compensation.

42. As CEO, I have overall responsibility for all aspects of Sotera’s operations and functions. Currently my specific responsibilities include negotiating and structuring transactions for the sale of Sotera’s assets and/or business, negotiating and structuring equity and/or debt re-financings, oversight of strategic and tactical decisions related to product enhancements and customer relations. It is anticipated that these specific responsibilities will continue throughout the chapter 11 case and that I will play an active role in negotiating the reorganization of Sotera and/or the sale of its assets. I believe any such reorganization and/or sale is likely also to benefit Sotera Research. My current base annual salary is \$325,000 and it has been since April 1, 2014. Sotera and I propose that I be paid an annual salary of \$275,000, a voluntary reduction of \$50,000, in regular paychecks throughout this chapter 11 case.

43. Mark Spring, CFO, has overall responsibility for Sotera’s financial, human resources, information technology and legal functions. His specific responsibilities include budgeting, financial reporting, managing Sotera’s billing, collection and disbursement processes, overseeing the operation and maintenance of Sotera’s information technology infrastructure and systems, overseeing human resources activities and serving as liaison with Sotera’s legal services providers. It is anticipated that these specific responsibilities will continue throughout this chapter 11 case and that Mr. Spring will play an active and critical role in the negotiation and structuring of the reorganized Debtor. Mr. Spring’s current base annual salary is \$275,000 and it has been since February 1, 2016 (prior to that time it was \$250,000). Sotera proposes to continue paying Mr. Spring his current salary of \$275,000 in regular paychecks throughout this chapter 11 case.

1 **IV. BUSINESS OPERATION MOTIONS**

2 **A. Motion For Order Authorizing Continued Use Of Existing Bank**
3 **Account, Checks, And Business Forms And Continuation Of**
4 **Existing Deposit Practices (the “Bank Account Motion”)**

5 44. As of the Petition Date, the Debtors maintain a checking account, an
6 asset management account, a money market collateral account, and a certificate of
7 deposit with SVB and its affiliate. Additionally a money market account is
8 maintained at MUFG Union Bank, N.A. (“Union Bank”, together with SVB, the
9 “Banks”) (all accounts in the aggregate “Debtor Bank Accounts”). Each of the
10 Debtor Bank Accounts is held in the name of Sotera.

11 45. The SVB checking account (Account 8676) (“Checking Account”) is
12 the primary account used for the Debtors’ disbursements and deposit of receipts.
13 As of the Petition Date, the SVB checking account had a balance of approximately
14 \$372,244.

15 46. Sotera maintains an investment account (Account 1158) (“Investment
16 Account”) with Silicon Valley Bank Asset Management, an affiliate of SVB.
17 Funds that are not required for current use are maintained in a money market fund
18 within this account. As of the Petition Date, the SVB investment account had a
19 balance of approximately \$49,093.

20 47. Sotera maintains a money market collateral account (Account 4093)
21 (“Landlord Collateral Account”) at SVB that serves to collateralize a letter of
22 credit issued by SVB whose beneficiary is the Debtors’ landlord. The letter of
23 credit is designed to provide financial coverage to the landlord for tenant
24 improvements funded by the landlord at the inception of the Debtors’ leased
25 facilities in San Diego. The balance of the money market collateral account as of
26 the Petition Date was \$314, 244.

1 48. Sotera maintains a certificate of deposit with SVB (Account 3621)
2 (“Credit Card Collateral Account”) that collateralizes the corporate credit card
3 accounts that are sponsored by SVB. The balance of the certificate of deposit as of
4 the Petition Date was \$100,000.

5 49. Sotera maintains a money market account (Account 3960) (“Money
6 Market Account”) with Union Bank. The balance of the Union Bank money
7 market account is approximately \$2,004,507.

8 50. The Debtors do not maintain a cash management system in the sense
9 of a system of automatic sweeps from one account to another account, etc.

10 51. I am informed and believe the Debtors’ use of the Debtor Bank
11 Accounts represent a customary and essential business practice, the continued use
12 of which is essential to the Debtors’ business operations during the chapter 11
13 cases and their goal of maximizing value for the benefit of all parties in interest. I
14 am further informed and believe that both Union Bank and SVB are approved
15 depositories by the U.S. Trustee.

16 52. If the Bank Account Motion is granted, the Debtors will work with the
17 Banks to implement appropriate controls and procedures to ensure that no
18 payments will be made on any debts incurred by the Debtors prior to the Petition
19 Date, other than those authorized by this Court. The Debtors will work closely
20 with the Banks, and SVB in particular as it holds the Checking Account, to ensure
21 appropriate procedures are in place to prevent checks issued by the Debtors
22 prepetition from being honored absent the Court’s approval and to ensure that no
23 third-party with automatic debit capabilities is able to debit amounts attributable to
24 the Debtors’ prepetition obligations.

25 53. The Debtors maintain a credit card account sponsored by SVB (the
26 “Credit Card”) and rely on it regularly in booking business travel, including flight
27 and hotels, and other necessary supplies from time to time. The Debtors’ market
28 and sell their products around the world and travel is a critical part of their

1 business. As described in the Debtors' Employee Wages and Benefits Motion,
2 certain employees of the Debtors rely on the Credit Cards while doing business
3 travel and it is an integral part of the Debtors' expense reimbursement procedures.
4 The Debtors' charge approximately \$50,000-70,000 on the Credit Card per month,
5 which is paid off each month.

6 54. I believe changing the Debtors' existing checks, bank signature cards,
7 and Credit Card would be expensive, unnecessary, and burdensome to the Debtors'
8 estates. Employees rely on the Credit Card for expenses during travel and if the
9 Debtors are required to close the Credit Card, the Debtors' operations
10 internationally would be severely disrupted.

11 55. Further, such changes would disrupt the Debtors' business operations
12 and would not confer any benefit upon parties that deal with the Debtors.
13 Complying with the U.S. Trustee's requirements as set forth in the Bank Account
14 Motion would unduly burden the Debtors and impose unnecessary costs.

15 56. It would be extremely onerous for the Debtors to close all existing
16 bank accounts and open new debtor-in-possession accounts. In addition, it would
17 be unnecessary and inefficient to establish specific debtor-in-possession accounts
18 for payroll and tax payments. In my belief and opinion that the Debtors can pay
19 their payroll and tax payments most efficiently from their existing accounts at SVB
20 in accordance with their existing practices. In addition, it is my informed opinion
21 that it is unnecessary to require the Debtors to establish specific debtor in
22 possession accounts for cash collateral. I submit that the Debtors have provided
23 significant safeguards to ensure that the prepetition lenders with security interests
24 in the Debtors' cash collateral are adequately protected and that such parties have
25 been provided with notice of the proposed use of such cash collateral.

26 57. For this reason, the Debtors request that the Court waive certain
27 operational requirements of the U.S. Trustee as set forth in the Bank Account
28 Motion.

**B. Motion For Order Under 11 U.S.C. §§ 105 And 363 Authorizing:
(A) Continuation Of, And Payment Of Prepetition Obligations
Incurred In The Ordinary Course Of Business In Connection
With, Various Insurance Policies, And (B) Banks To Honor And
Process Checks And Electronic Transfer Requests Related
Thereto (the “Insurance Motion”)**

58. In the Insurance Motion, the Debtors seek authorization to continue paying premiums and all other obligations, including prepetition obligations, necessary for continued coverage under the Insurance Policies, and to the extent necessary, to renew and/or modify the Insurance Policies in the ordinary course of business.

59. The Debtors also seek entry of an order authorizing its banks to receive, process, honor, and pay checks or electronic transfers used by the Debtors to pay the foregoing and to rely on the representations of such Debtors as to which checks are issued and authorized to be paid in accordance with the Insurance Motion.

60. As described in the Insurance Motion, in the ordinary course of their business, the Debtors maintain numerous insurance policies with various insurance providers (collectively, the “Insurers”) that provide coverage for, among other things, general commercial liability, umbrella liability, automobile liability, workers’ compensation liability, property & casualty liability, executive risk liability, special crime, director and officer liability, fiduciary liability, product liability, and marine cargo liability (the “Insurance Policies”). The Insurance Policies maintained by the Debtors are set forth on Exhibit B filed in support of the Insurance Motion.

61. The total aggregate annual premiums for the Insurance Policies is approximately \$190,524. As of the Petition Date, the Debtors have paid in full the premiums for the current policy periods for all Insurance Policies and quarterly

1 premiums will soon be due for the Property Policy, the Products Liability Policy,
2 and the E&O Policy (as all such terms are defined in the Insurance Motion).

3 62. As detailed in the Insurance Motion, the Debtors maintain third-party
4 Insurance Policies through various insurance companies. I have reviewed the
5 Insurance Motion and hereby attest to the accuracy of the information therein. The
6 Insurance Policies are essential to the ongoing operation of the Debtors' business.
7 In many cases, the coverage provided under the Insurance Policies is essential for
8 preserving the value of the Debtors' assets and, such coverage is required by
9 various regulations, laws, and contracts that govern the Debtors' business
10 operations.

11 63. The Debtors have been represented in their negotiations with their
12 various Insurers by insurance brokers Barney & Barney. The employment of
13 Barney & Barney as the Debtors' insurance broker has, on information and belief,
14 allowed the Debtors to obtain the insurance coverage necessary to operate their
15 businesses in a reasonable and prudent manner and to realize considerable savings
16 in the procurement of such policies. I believe it is in the best interests of the
17 Debtors' creditors and estates to continue their business relationship with Barneys
18 & Barneys.

19 64. Accordingly, for the reasons set forth herein and in the Insurance
20 Motion, on behalf of the Debtors, I respectfully submit that the relief requested in
21 the Insurance Motion is in the best interests of the Debtors' estates, their creditors,
22 and all other parties in interest, and will enable the Debtors to continue to operate
23 their business in compliance with contractual and regulatory requirements and to
24 safeguard the value of their estates.

25 65. I submit the Insurance Motion should be heard on an emergency basis
26 due to the possible detrimental impact a delay in hearing the Insurance Motion is
27 likely to cause. The Debtors maintain policies that provide critical insurance
28 coverage without which the Debtors' business and the Debtors' estates may be

1 exposed to unnecessary liability. At this critical time, the relief sought herein will
2 help ensure continued insurance coverage, which is necessary for uninterrupted
3 operation of the Debtors' businesses and preservation of valuable estate assets.

4 **C. Motion For Entry Of An Order Pursuant To 11 U.S.C. §§ 105(A),**
5 **541(C), And 507(A)(8) Authorizing The Debtor To Pay**
6 **Prepetition Sales And Use, Trust Fund And Other Taxes, Fees**
7 **And Other Similar Charges And Related Obligations (the "Tax**
8 **Motion")**

9 66. In the Tax Motion, the Debtors seek entry of an order authorizing
10 them to pay, in their sole discretion, any prepetition tax and fee obligations
11 including, without limitation, sales taxes; use taxes; medical device excise taxes;
12 franchise taxes; personal property taxes; corporate income taxes; any other types of
13 taxes, fees, or similar charges; and any penalty, interest, or similar charges in
14 respect of such taxes (collectively, the "Taxes") owing to certain federal, state,
15 provincial, and local governmental entities in the United States, including as listed
16 on Exhibit B to the Tax Motion (the "Taxing Authorities").

17 67. In addition, the Debtors request in the Tax Motion that the Court
18 authorize the Debtors' banks to receive, process, honor, and pay all prepetition and
19 post-petition checks and fund transfers on account of the Taxes that had not been
20 honored and paid as of the Petition Date, and authorize the Debtors' banks and
21 financial institutions to rely on the representations of the Debtors as to which
22 checks and fund transfers should be honored and paid in respect of Taxes, provided
23 that sufficient funds are on deposit in the applicable accounts to cover such
24 payments.

25 68. I believe that by paying the Taxes in the ordinary course of business,
26 as and when due, the Debtors will avoid unnecessary disputes with the Taxing
27 Authorities—and expenditures of time and money resulting from such disputes—
28 over myriad issues that are typically raised by such units as they attempt to enforce

1 their rights to collect Taxes.

2 69. Prior to the Petition Date, the Debtors incurred obligations to federal,
3 state and local governments in the United States. Although, as of the Petition Date,
4 I believe the Debtors were current in the payment of assessed and undisputed
5 Taxes, certain Taxes attributable to the prepetition period may not yet have become
6 due. It is my understanding that certain prepetition Taxes may not be due until the
7 applicable monthly, quarterly, or annual payment dates—in some cases
8 immediately and in others not until next year. I have been informed that in 2015,
9 the Debtors paid approximately \$78,648 on account of Taxes.

10 70. I believe that the continued payment of the Taxes on their normal due
11 dates will ultimately preserve the resources of the Debtors' estates, thereby
12 promoting their prospects for a successful Chapter 11 process. It is my
13 understanding that, if such obligations are not timely paid, the Debtors will be
14 required to expend time and incur attorneys' fees and other costs to resolve a
15 multitude of issues related to such obligations, each turning on the particular terms
16 of each Taxing Authority's applicable laws, including whether (a) the obligations
17 are priority, secured, or unsecured in nature, (b) the obligations are pro rata or
18 fully prepetition or post-petition, and (c) penalties, interest, attorneys' fees and
19 costs can continue to accrue on a post-petition basis and, if so, whether such
20 penalties, interest, attorneys' fees, and costs are priority, secured, or unsecured in
21 nature.

22 71. Moreover, I have been advised that certain of the Taxes may be
23 considered to be obligations as to which the Debtors' officers and directors may be
24 held directly or personally liable in the event of nonpayment. In such events, I
25 believe that collection efforts by the Taxing Authorities would provide obvious
26 distractions to the Debtors and their officers and directors in their efforts to bring
27 the Chapter 11 Cases to an expeditious conclusion.

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72. I submit that the setting of this hearing on an emergency basis is warranted so as to ensure the Debtors can maximize value for their estates and their creditors by continuing to operate their business and engage successfully in their restructuring efforts without having to devote valuable resources to resolving unnecessary delays in paying timely taxes.

**D. Motion of Debtors for Entry of Interim and Final Orders
Authorizing Use of Cash Collateral Pursuant to 11 U.S.C. § 363
and Setting Final Hearing (the “Cash Collateral Motion”)**

73. In the Cash Collateral Motion, the Debtors seek an order (i) authorizing Debtors to use funds that may constitute “cash collateral” as defined in Bankruptcy Code section 363(a) (“Cash Collateral”) for payment of costs and expenses incurred in the ordinary course of Debtors’ business and the management of their assets in accordance with the Budget (substantially in the form filed in support of the Cash Collateral as Exhibit B); (ii) providing adequate protection to the Prepetition Lenders (as defined in the Cash Collateral Motion) for any diminution in value of their interests in the Prepetition Collateral (as defined in the Cash Collateral Motion), including Cash Collateral; (iii) scheduling a final hearing (“Final Hearing”) to consider the relief requested in the Motion and approving the form of notice with respect to the Final Hearing; and (iv) granting related relief.

74. As stated in the Cash Collateral Motion, as of the Petition Date, the Cash Collateral is deposited in the following bank accounts held by Sotera (the “Cash Collateral Bank Accounts”): the Checking Account (\$372,244), the Investment Account (\$49,093), and the Money Market Account (\$2,004,507).

75. I am informed and believe that Oxford, as collateral agent and itself, and SVB claim security interests in the accounts held at SVB (the Checking Account and Investment Account) to secure the Prepetition Loans. I am informed and believe that Oxford, as itself only, claims a security interest in the Money Market Account. For purposes of the Cash Collateral Motion only, Debtors do not

1 dispute that SVB and/or Oxford have perfected and enforceable security interests
2 in the Cash Collateral Accounts.

3 76. If the Cash Collateral Motion is not approved and the Debtors do not
4 obtain emergency authorization to use the Cash Collateral, I believe that the
5 Debtors will suffer immediate and irreparable harm. Without the use of the Cash
6 Collateral, the Debtors will not have the liquidity to continue to operate their
7 business and successfully market and sell its assets. The Debtors urgently need
8 funds to make payroll, capital expenditures and other expenditures that are critical
9 to their continued viability and ability to sell their assets or recapitalize. In
10 addition, as hospitals and patient care centers rely on the Debtors' products, if the
11 Debtors are not permitted to use the Cash Collateral, patient care may be adversely
12 affected to the harm of patients of the Debtors' customers who rely on the Debtors'
13 products.

14 77. As described above, it is vital to the success of the Debtors'
15 reorganization efforts that they immediately obtain access to Cash Collateral. The
16 preservation of the Debtors' business and the Debtors' ability to successfully sell
17 their assets or as a going concern depend heavily upon the expeditious approval of
18 the use of Cash Collateral for general working capital purposes. Absent this
19 Court's approval of the interim relief sought in the Cash Collateral Motion, the
20 Debtors face a substantial risk of severe disruption to their business operations and
21 irreparable damage to their relationships with their vendors and customers.

22 78. The Debtors' request for use of Cash Collateral is limited to the
23 Budget, which was filed in support of the Cash Collateral Motion as Exhibit B and
24 shows, *inter alia*, the Debtors' forecasted receipts and disbursements from the
25 Petition Date through December 23, 2016.

26 79. Under the Budget, the Debtors intend to use Cash Collateral, among
27 other things, (i) to pay (a) payroll expenses, (b) post-petition trade amounts and (c)
28 various limited prepetition claims that are the subject of other motions filed

1 concurrently herewith and as may be authorized by the Court; (ii) for working
2 capital to fund critical business operations conducted by the Debtors; and (iii) for
3 other general corporate purposes.

4 80. The Debtors believe that the terms and conditions of their use of the
5 Cash Collateral (including the provision of adequate protection described in the
6 Cash Collateral Motion) are appropriate and reasonable and that such adequate
7 protection is sufficient to secure any adequate protection obligations under the
8 circumstances. Therefore, the Debtors submit that they should be authorized to use
9 the Cash Collateral on the terms set forth in the Budget.

10 81. The majority of the Debtors' assets are encumbered by purported liens
11 securing the Prepetition Loans. Therefore, it would be impossible to operate the
12 Debtors' business and conduct the Chapter 11 Cases absent authorization to use the
13 Cash Collateral. Unless this Court authorizes the use of the Cash Collateral, the
14 Debtors' operations would likely cease, resulting in adverse effects on the value of
15 the Debtors' estates to the severe detriment to all stakeholders, including the
16 Debtors' hospital customers and their patients, and the Debtors' employees whose
17 employment would be terminated in the event the Debtors are unable to use the
18 Cash Collateral, as well as the Prepetition Lenders themselves.

19 82. For the foregoing reasons, I believe that authorization to use Cash
20 Collateral on an emergency basis is in the best interests of the Debtors, their
21 estates, their creditors, and other parties in interest.

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E. Motion For Order Pursuant To 11 U.S.C. §§ 105(A) And 366: (I) Prohibiting Utility Companies From Altering, Refusing, Or Discontinuing Service, (Ii) Determining Adequate Assurance Of Payment For Future Utility Services, And (Iii) Establishing Procedures For Determining Adequate Assurance Of Payment (the “Utilities Motion”)

83. In the Utilities Motion, the Debtors request entry of an order (a) prohibiting the utility providers utilized by the Debtor, including the utility providers set forth in the document filed in support of the Utility Motion as Exhibit B (collectively, the “Utility Companies” and each individually a “Utility Company”) from (i) altering, refusing, or discontinuing utility services to, or discriminating against, the Debtors on account of any outstanding amounts for services rendered prepetition or (ii) drawing upon any existing security deposit, surety bond, or other form of security to secure future payment for utility services; (b) determining that adequate assurance of payment for post-petition utility services has been furnished to the Utility Providers providing services to the Debtors; and (c) establishing procedures for resolving future requests by any Utility Provider for additional adequate assurance of payment.

84. In conjunction with their day-to-day operations, the Debtors receive traditional utility services from various utility providers (each, a “Utility Provider” and collectively, the “Utility Providers”), for, among other things, electricity, local and long-distance telecommunication services, data service, network services, cloud storage services, and other similar services (collectively, the “Utility Services”). The Utility Providers include, without limitation, the entities set forth on the list filed in support of the Utilities Motion as Exhibit B (the “Utility Providers List”).

85. I have been informed that the Debtors paid an average of approximately \$32,000 per month on account of all Utility Services during the first

1 half of 2016.

2 86. I believe that the Debtors' receipt of uninterrupted Utility Services is
3 vital to the Debtors' continued business operations and, consequently, to the
4 success of these Chapter 11 Cases. Disruption of the Utility Services could have a
5 devastating impact on the Debtors' ability to continue to generate revenue and
6 maintain their value as a going concerns. Therefore, I believe that the relief
7 requested in the Utilities Motion on an emergency basis is necessary and in the
8 best interests of the Debtors, their estates, and creditors.

9 **F. Motion Of Debtors For Entry Of An Order Authorizing (A)**
10 **Payment Of Certain Prepetition Workforce Claims, Including**
11 **Wages, Salaries, And Other Compensation, (B) Payment Of**
12 **Certain Employee Benefits And Confirming Right To Continue**
13 **Employee Benefits On Postpetition Basis, (C) Payment Of**
14 **Reimbursement To Employees For Expenses Incurred**
15 **Prepetition, (D) Payment Of Withholding And Payroll-Related**
16 **Taxes, (E) Payment Of Workers' Compensation Obligations, And**
17 **(F) Payment Of Prepetition Claims Owing To Administrators**
18 **And Third-Party Providers (the "Employee Wage and Benefits**
19 **Motion")**

20 87. In the Employee Wage and Benefits Motion, the Debtors request entry
21 of an order authorizing, but not directing, the Debtors, in their sole discretion, to
22 (a) pay prepetition claims and honor obligations incurred or related to the
23 Compensation Obligations, the Withholding Obligations, the Incentive Programs
24 (including the Bonus Program and the Equity Incentive Plan), PTO and Vacation
25 Time, the Reimbursable Expense Obligations, the Employee Benefits Obligations,
26 Workers' Compensation Claims, and all fees and costs incident to the foregoing,
27 including amounts owed to third-party administrators (including the
28 Administrative Fee Obligations) and (b) maintain, continue, and honor, in the

1 ordinary course of business, the Incentive Programs (including the Bonus Program
2 and the Equity Incentive Plan), PTO, Vacation Time, and holiday pay policies,
3 postpetition Reimbursable Expense Obligations, the Employee Benefits Plans, and
4 the Workers' Compensation Claims.

5 88. The Employees are the lifeblood of the Debtors' business, and their
6 value cannot be overstated. To a significant extent, the Debtors' success depends
7 upon their ability to attract and retain qualified personnel. The loss of certain
8 Employees could impede the Debtors' commercialization, product development
9 and customer support efforts and seriously harm their ability to successfully
10 implement their business strategy. Furthermore, replacing Employees can be
11 tremendously difficult for the Debtors given the limited number of qualified
12 individuals in the medical device industry. Many of the Debtors' employees
13 possess unique skillsets, expertise, and education, which are required to
14 successfully develop and commercialize the Debtors' product.

15 89. If the Debtors cannot assure their Employees that they will promptly
16 pay prepetition Employee Obligations to the extent allowed under the Bankruptcy
17 Code, and continue to honor, as applicable, the Employee Benefits Obligations,
18 certain Employees will likely seek employment elsewhere, potentially with the
19 Debtors' competitors. The loss of Employees at this critical juncture would have a
20 material adverse impact on the Debtors' business and ability to maximize value
21 through the prosecution of these Chapter 11 Cases.

22 90. The Debtors also regularly utilize the services of contract workers to
23 provide a variety of services. The Contract Workers are generally provided by
24 TargetCW and Qualstaff, and the number of Contract Workers fluctuates
25 depending on the Debtors' needs. At any given time, the Debtors may have
26 approximately five to ten Contract Workers engaged. In 2015, the Debtors spent
27 approximately \$330,000 in connection with the engagement of certain Contract
28 Workers.

1 91. In such capacity, the Contract Workers fill several types of roles for
2 the Debtors, including providing temporary production and quality assurance
3 resources, as needed. The Contract Workers are a reliable and cost-efficient
4 component of the Debtors' operations. Thus, as with the Debtors' regular
5 Employees, if the Debtors fail to honor their prepetition compensation obligations
6 to the Contract Workers, it is likely that the Debtors will lose such individuals'
7 valuable services to the detriment of the Debtors' ongoing business operations.

8 92. In the ordinary course of business, the Debtors incur payroll and other
9 compensation obligations for their Workforce. The Debtors also provide other
10 benefits to their Employees for the performance of services. These benefits and
11 obligations are described in more detail in the Employee Wage and Benefits
12 Motion and I hereby attest to the facts set forth therein.

13 93. I believe that if the Debtors are unable to promptly satisfy the
14 Employee Obligations, Employee morale and loyalty will suffer at a time when
15 Employee support is critical. Furthermore, in the absence of such payments, I
16 believe that the Employees may seek alternative employment opportunities,
17 potentially with the Debtor's competitors. Such a development would deplete the
18 Workforce, hinder the Debtors' ability to service the needs of their customers, and
19 likely diminish creditor and counterparty confidence in the Debtors. Moreover, the
20 loss of valuable Employees and the recruiting efforts that would be required to
21 replace such Employees would be a substantial and costly distraction at a time
22 when the Debtors must focus on sustaining their operations. Accordingly, I believe
23 that the Debtors must be able to pursue all reasonable measures to retain the
24 Employees by, among other things, continuing to honor wages, benefits, and
25 related obligations, including those that accrued prior to the Petition Date, as set
26 forth in the Employee Wage and Benefits Motion.

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1 94. Accordingly, for the reasons set forth herein and expanded on in the
2 Employee Wage and Benefits Motion, on behalf of the Debtors, I respectfully
3 submit that the relief requested in the Employee Wage and Benefits Motion on an
4 emergency basis is in the best interests of the Debtors' estates, their creditors, and
5 all other parties in interest, and will enable the Debtors to continue to operate their
6 business in these Chapter 11 Cases with minimal disruption, thereby maximizing
7 value for the estates.

8 **G. Motion For An Order Authorizing The Debtors To Honor Their**
9 **Equipment Warranty and to Continue Their Prepetition**
10 **Warranty Practices In The Ordinary Course Of Business (the**
11 **"Customer Warranty Motion")**

12 95. In the Customer Warranty Motion, the Debtors request entry of an
13 order granting them the authority, but not the direction, to: (a) perform, at their sole
14 discretion and without further court order, any prepetition obligations related to the
15 equipment warranty set forth below, including repairing and/or replacing defective
16 equipment, and (b) continue, renew, replace, modify and/or terminate the
17 equipment warranty in the ordinary course of business at the Debtors' sole
18 discretion.

19 96. The end users of the Debtors' products are typically hospitals and care
20 units and the Debtors' equipment plays an important role in monitoring patients of
21 the Debtors' customers and keeping them safe.

22 97. To help ensure customer satisfaction and loyalty, the Debtors offer
23 their end users an equipment warranty, which is restated below (the "Equipment
24 Warranty");

25
26 Equipment Warranty: Sotera warrants to End User that
27 the hardware equipment sold by Sotera will operate
28 substantially in accordance with Sotera's published
documentation in effect on the date of the hardware
equipment shipment or Sotera will, at its discretion and

1 expense, repair or replace the equipment. Replacement
2 parts may, at Sotera's option, be reconditioned parts, and
3 will be warranted for the remainder of the warranty
4 period in effect on the original Products purchased,
5 unless otherwise mandated by applicable law. The
6 warranty period for Products specified below and
7 delivered prior to the Customer Acceptance Date shall
8 commence upon the Customer Acceptance Date.
9 Otherwise, the warranty period will commence on order
10 ship date.

11 ViSi Mobile Monitor, Cuff Module, Battery Charger,
12 Power Pack and Power Pack Cradle are warranted for a
13 period of three (3) years.

14 Chest Sensors are warranted for a period of one (1) year.
15 Extended Warranty is not available for this item.

16 Equipment warranty does not include disposables/
17 consumables, software or third-party hardware.

18 98. The Equipment Warranty is an important aspect of the Debtors'
19 business. Given the competitiveness of the medical device industry, I believe
20 customer satisfaction and loyalty is critical to the success of the Debtors'
21 operations. The Equipment Warranty helps ensure this customer satisfaction and
22 loyalty and it helps generate goodwill between the Debtors and their end users.
23 This enables the Debtors to retain existing Customers, attract new ones, and
24 ultimately, to enhance their revenue and profitability.

25 99. I believe it is essential that the Debtors maintain a strong connection
26 with our loyal customer base while also solidifying new business relationships
27 critical to which is a warranty on the equipment we sell. The Debtors' customers
28 rely on the Debtors' equipment to preserve the safety and wellbeing of their
patients, and they rely on the Equipment Warranty to ensure that any defective
equipment is repaired and/or replaced with properly functioning equipment. The
Debtors routinely diagnose problems and repair or replace equipment pursuant to

1 the Equipment Warranty. I believe the Equipment Warranty is integral to the
2 Debtors' positive reputation in the marketplace and it helps us generate and
3 compete for significant business that is critical to the Debtors' profitability.

4 100. I believe the relief requested in the Customer Warranty Motion should
5 be granted on an emergency basis. Without continued performance of Debtors'
6 obligations under its warranty programs, hospitals, patient care centers, and other
7 customers of the Debtors may be left without properly functioning equipment for
8 the care of their patients. In addition, delays in the Debtors' performance of their
9 warranty obligations will only further shake customer confidence in the Debtors'
10 ability to operate effectively throughout the bankruptcy case, which I believe will
11 threaten the Debtors' ability to successfully reorganize.

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1 I declare under penalty of perjury under the laws of the United States of
2 America that the foregoing is true and correct.

3 Executed this 30 day of September 2016 at San Diego, California.
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7 THOMAS WATLINGTON
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